IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Crl.Rev.No.1619 of 2005

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Birmati Vs. State of Haryana and others

Present : Mr.Sanjiv Gupta, Advocate, for the petitioner.

Prayer in this revision petition is for setting aside the order dated 16.5.2005, passed by the Additional Sessions Judge, Sonepat, acquitting the respondents of offences under Sections 327,326,323,148 and 149 of the IPC.

Counsel for the petitioner contends that the learned Additional District Judge committed serious errors of law, while allowing the appeal and acquitting the respondents.

It is argued that the learned appellate Court erroneously held that the respondents were in possession of the land and not the aggressor party. It is contended that reliance upon the Rapat Roznamcha, reflecting delivery of possession to the respondents, was erroneously placed as the said document stood falsifiled.

Heard. Birmati, the petitioner herein, lodged an FIR on 8.5.1996, levelling allegations that though her husband was in possession of a parcel of land, the respondents harvested wheat crop and 5 Bighas of sugarcane. They destroyed the crop of Barsim and set ablaze the remaining crop. Birmati, Shakuntla and Suman were attacked and received injuries. Pursuant to the FIR, a trial ensued wherein, the Judicial Magistrate,Ist Class, Gohana, vide judgement and order dated 10.9.2002,

convicted and sentenced the appellants, for offences under Sections 326,324 and 149 of the IPC. The appellate Court, however, reversed the aforementioned judgement and acquitted the appellants.

The appellate Court, upon an appraisal of the evidence on record, recorded that out of the injured, Ms.Shakuntla failed to step into the witness box. Ms.Suman, who appeared as a PW, deposed that she could not recognise the persons, who injuried her. Birmati deposed in favour of the prosecution version. The learned appellate Court, found as a matter of fact that as per the evidence on record, the injuries suffered by Birmati were not inflicted by a sharp edged weapon and, therefore, no offence under Section

326 of the IPC could have committed. It was also held that the respondents purchased the land in dispute by way of a registered sale deed. Birmati's husband sought to pre-empt the sale, by filing a suit for pre-emption. He lost this litigation upto the Hon'ble Supreme Court. In execution of the judgement and decree, warrants of possession were issued, pursuant whereto, Rapat Roznamcha No.245 dated 2.3.1996 was recorded by the revenue authorities, evidencing delivery of possession to the respondents. On the basis of the aforementioned facts, the appellate Court held that the respondents and not the complainant's were in possession of the land in dispute and as injuries were inflicted upon some of the respondents, which were not explained, the facts, clearly indicated that the respondents were in possession and the complainants were the aggressor party. On these findings of facts, the respondents were acquitted.

The contentions raised by counsel for the petitioner, namely; that the petitioner's husband was in actual physical possession and, therefore, the appellate Court erred in recording a finding to the contrary, cannot be accepted. The revenue record, namely; the Rapat Roznamcha

clearly reflects the respondents to be in possession and, therefore, the learned trial Court did not commit any error of law, while holding that the respondents were in possession and the petitioner's husband etc. were the aggressors.

It is, thus, apparent that the appellate Court did not commit any error of jurisdiction or law, that would require interference. Dismissed.

11.9.2006 (RAJIVE BHALLA)
GS JUDGE